

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
(Corpus Christi Division)**

In re	§	Case No. 05-21207
	§	
ASARCO, LLC, et al	§	Chapter 11
	§	
Debtors	§	Jointly Administered
	§	

Witness Name: Kathleen Moynan
Testifying on behalf of: U.S. Department of Justice

DECLARATION OF KATHLEEN MOYNAN

Kathleen Moynan declares as follows.

1. I am the Coeur d'Alene (CdA) Natural Resource Damage Assessment and Restoration (NRDAR) Project Manager for the United States Department of the Interior (DOI) and am employed by the U.S. Fish and Wildlife Service (FWS). My main duties as project manager are to coordinate and manage the CdA Basin NRDAR project. I co-direct all project management, administrative, and financial issues with other DOI bureaus, including Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA); the Department of Agriculture, Forest Service (USDA-FS); and the Coeur d'Alene Tribe of Idaho. I have degrees in animal ecology with an emphasis in water pollution, and in fisheries biology. For most of my 18 years of Federal Agency service, I have conducted assessments of aquatic and riparian resources, and fish and wildlife listed under the Endangered Species Act to describe, and where possible minimize, affects of land management activities on the environment. I also coordinated a large natural resource restoration program in the Pacific Northwest for the FWS.

2. As part of my duties as project manager, I coordinated and was the principal author of the Final Coeur d'Alene Basin Interim Restoration Plan (FIRP). The FIRP was completed by the Coeur d'Alene Basin natural resource trustees (DOI, FWS and BLM; USDAFS; and the CdA Tribe) to take advantage of opportunities to restore resources injured by mining-related hazardous substances using currently available funds. These funds were made available through prior settlements with several parties potentially responsible for releases of mining-related hazardous substances in the CdA Basin. I had extensive conversation with each of the Trustee representatives during the production of the FIRP to understand the project components and the project funding allocations.

3. I have reviewed the rebuttal expert report of William Desvousges and Environ International Corporation prepared on behalf of Asarco Incorporated dated August 10, 2007. Dr. Desvousges uses the cost information presented in the FIRP to suggested that the costs of restoration activities in the Trustee' damages calculations are exaggerated. It is clear to me that Dr. Desvousges has incorrectly interpreted the cost information that is presented in the FIRP. The cost information in the FIRP is an estimate of the funds the Trustees are initially allocating to each project, not the amount of funds necessary to complete the activities listed in the project descriptions in the FIRP. The Trustees authorized a broad array of project actions through the FIRP to take advantage of any opportunities to leverage the amount of funding available to us to begin restoration of injured natural resources in the CdA Basin. In fact, the FIRP specifically states: "The dollar amounts associated with each projects are estimates and by consensus, the Trustees may allocate more or less funding to a particular project based on

factors such as cost share opportunities, the availability of funding from other sources, or future settlements with remaining defendants.”

4. Dr. Desvousges stated in his rebuttal report: “The DOI proposes an ideal restoration project as part of the Coeur d’Alene Basin Final Interim Restoration Plan and Environmental Assessment that would enhance 13.6 stream miles This proposed restoration project at Pine Creek would cost a total of \$600,000 or \$44,000 per stream mile,” (Desvousges p. 10 of 18). The cost per acre calculated by Dr. Desvousges is incorrect. The \$600,000 allotted to the Pine Creek project was not intended to encompass all the funds that would be needed to accomplish the tasks listed in the *Proposed Restoration* section of the FIRP for Pine Creek. Again, the FIRP specifically addresses this. “The Pine Creek restoration actions that are part of the FIRP preferred alternative would not complete all the restoration that is needed in Pine Creek. Rather, this project would provide part of the funding that would be required to complete restoration and monitoring of Pine Creek.” (DOI, p. 20)(emphasis added). As a matter of fact, Shoshone County, Idaho, is providing some cost share funding for this year’s FIRP activities in Pine Creek. This partnership will allow the Trustees to accomplish more, but not all, of the restoration actions that are authorized in Pine Creek through the FIRP.

5. Dr. Desvousges also stated in his rebuttal report: “. . . the Coeur d’Alene Basin Final Interim Restoration Plan and Environmental Assessment (2007) proposes restoring the 20-acre Sherlock Creek Placer Mine site for \$950,000 (47,000/acre).” (Desvousges p. 14 of 18). This statement about cost per acre is also incorrect. The funds allocated to the Sherlock Creek project by the Trustees in the FIRP (\$950,000) are only intended to complete some of the activities listed in the *Proposed Restoration* section.

The USDA-FS has already spent other funds on the Sherlock Creek project design and is seeking funds beyond those allocated by the Trustees (\$950,000) to complete the restoration and monitoring.

6. Finally, Dr. Desvousges stated: "The Benewah Creek Restoration Project (DOI 2007) is another example of cost-effective restoration that would improve river habitat. The project proposes to purchase 1,531-acres of high priority habitat, stream channel habitat quality evaluation (10.7 miles), stream channel reconstruction to halt/repair incision (2.88 miles), install grade control structures and revegetate 114-acres, all for \$600,000. Even if you were to allocate all the costs of this project to re-vegetation, that would be \$5,790/acre, ..." (Desvousges p. 14 of 18). The list of items presented in the FIRP can not possibly be completed for the \$660,000 allocated to the Benewah restoration projects by the Trustees. When read in context, the FIRP states just below the list of proposed restoration actions for Benewah Creek: "This project would accomplish a portion of these activities, beginning with acquiring high priority habitat and designing improvements." (DOI, p. 24). I would note that for Benewah Creek restoration, Dr. Desvousges does not divide the total list of actions by the allocated funding (\$660,000) as he did for Pine and Sherlock Creek restoration; instead, without justification, he uses only the acres of revegetation to calculate the cost per acre.

7. In producing the FIRP, the Trustees actually relied on the costs estimates in the reports of LeJeune et al., (2004), Stratus (2004), and Trost (2004). As stated in the FIRP, Appendix B. *Response to Comments on the Draft Coeur d'Alene Interim Restoration Plan*, at Comment 9, "... the costs outlined in Stratus (2004) were followed in initial restoration planning and project selection. Stratus Consulting (2004) developed

detailed cost estimates for various restoration project types. Additional information regarding cost estimates for the projects in the preferred alternative were generally based on the more detailed cost estimates from LeJeune et al., (2004), Stratus (2004), and Trost (2004). In addition, more detailed cost information will be developed as part of site-specific restoration projects.” (DOI, p.107)

8. It is a misrepresentation to use the dollar figures and the amount of restoration associated with individual projects in the FIRP to calculate a cost per acre for future restoration projects. The FIRP authorizes the Trustees to take a broad array of actions including taking advantage of opportunities to leverage the limited settlement funds currently available to address injuries to natural resources in the CdA Basin. The Trustees relied on the costs estimates in the reports of LeJeune et al., (2004), Stratus (2004), and Trost (2004) in producing the FIRP.

9. As the NRDAR project manager, I am familiar with the project being undertaken by the FWS, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, the Coeur d’Alene Tribe, the state of Idaho and Ducks Unlimited (DU) in the CdA Basin. It is my understanding that this project has been characterized as a “conservation easement.” While a conservation easement is certainly a portion of the project, the remediation and restoration actions being undertaken are substantial and include, but are not limited to, remediation of lead in the soils, rehabilitation of some of the existing levees, installation of water control and conveyance structures, substantial agricultural lands-to-wetlands conversion, and long-term operation, maintenance and monitoring of the easement. In fact, even that portion of the action which involves DU includes development and implementation of a restoration plan, including but not limited

to vegetation and water management. The general components of that plan are set forth in a cooperative agreement entered into between the FWS and DU in 2007.

10. DU has attempted to identify additional agricultural landowners interested in the CdA Basin for wetland conversion and/or restoration projects, including conservation easements. At this time, there are no landowners that are pursuing restoration or conservation easements with the Trustees.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of October, 2007, at 11:40 am.

Kathleen Moynan
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